IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10030 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAJAPATI SOMABHAI DALABHAI

Versus

STATE OF GUJAAT

Appearance:

1. Special Civil Application No. 10030 of 2004

MR DK ACHARYA for Petitioner No. 1

MR SOOD AGP for Respondent No. 1-5

None for Respondent Nos.6-8

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 01/09/2004

ORAL JUDGEMENT

Rule. Mr.Sood, learned AGP waives service of Rule on behalf of the respondent Nos.1 to 5. Though

served, nobody appears on behalf of the respondent Nos.6 to 8. As Notice was issued earlier by this Court for final hearing, the matter is taken up for hearing today.

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#. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment and order dated 1.10.2003 / 17.5.2004 passed by the Secretary [Appeals], Revenue Department, State of Gujarat passed in Revision Application No.1 / 1998 in allowing the said revision application by quashing and setting aside the order passed by the Mamlatdar, Vadgam dated 30.5.1994.

#. One Kamlaben Jayantilal and others were owners of the land bearing Survey Nos.48/6, 48/7, 48/8, 48/9, 48/10, 39/1, 39/2, 49/1, 49/3 and 48/4 situated at village Limboi. The petitioner purchased the said lands in question by registered sale deed on 11.8.90 and 27.11.96 respectively and the name of the petitioner came to be mutated in the revenue record on 13.8.1994 and 30.11.1996. The Mamlatdar, Vadgam vide order dated 30th May, 1994 passed in Jagir/Vashi Case No.1/94 held that aforesaid lands in question were cultivated by the original land owners by themselves and declared them as permanent holders. Being aggrieved and dissatisfied of the said order passed by the Mamlatdar, the State Government has preferred Revision Application before the Secretary [Appeals], Revenue Department, State of Gujarat which was numbered as Revision Application No.1/1998, in which, the original land owners Kamlaben Jayantilal and Sushilaben Kanailyalal were joined as the party respondents. The revisional authority by its judgment and order dated 1.10.2003 / 17.5.2004 has allowed the said revision application while quashing and setting aside the order passed by the Mamlatdar, Vadgam dated 30th May, 1994 in Jagir Case by which the original land owners were declared as the permanent holders under the provisions of the Bombay Merged Territories and Areas [Jagir Abolition] Act, 1953, which has given rise to filing of the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

#. Shri D.K.Acharya, learned advocate appearing on behalf of the petitioner has submitted that the petitioner has purchased the land as early as on 18.8.1990 and 27.11.1996 and names of the petitioners were already mutated in the revenue record on 13.8.1994 and 30.11.1996 respectively and they have developed the said lands and though their names were already mutated in the revenue records, without giving any opportunity of

being heard to the petitioner who has purchased of the lands in question, the Secretary [Appeals] has passed the order cancelling the order passed by the Mamlatdar, Vadgam dated 30th May, 1994. He has further submitted that by virtue of the order passed by the revisional authority, the petitioner is prejudiced and vitally affected and therefore, the impugned judgment and order passed by the Secretary [Appeals] is required to be quashed and set aside.

#. It is not in dispute that before passing the judgment and order made by the Secretary [Appeals], the petitioner was not heard. In the revision application filed by the State Government, the original land owners viz. Kamalaben Jayantilal and Sushilaben Kanaiyalal were joined as the party respondents. Even the petitioner was not joined as the party respondent though his name is already mutated in the revenue records at the time when the Mamlatdar, Vadgam passed the order with regard to the said lands and even at the time when revision application came to be filed by the State Government. It seems that the State Government preferred revision application in the year 1998 and prior thereof, the petitioner has already purchased the land in question and his name is already mutated in the revenue record in the year 1994 and 1996 itself. Therefore, before passing any order, the petitioner ought to have been heard and was required to be heard. As before passing the order by the revisional authority, the petitioner has not been heard, the impugned judgment and order made by the revisional authority is required to be quashed and set aside only on the ground that it is made against the principle of natural justice and the matter is required to remanded to Secretary [Appeals] for deciding the revision application afresh in accordance with law and after giving an opportunity to the petitioner.

#. For the reasons stated above, the impugned judgment and order passed by the Secretary [Appeals] dated 1.10.2003 / 17.5.2004 in revision application No.1/98 is hereby quashed and set aside while remanding the matter to the Secretary [Appeals] for deciding the same afresh in accordance with law and on merits after giving opportunity of hearing to the petitioner.

Rule is made absolute to the aforesaid extent with no order as to costs.

Date : 1.9.2004 [M.R.Shah, J.]
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